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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/215,030 03/18/94 TAMARKIN

18N1/1123

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019940021
EXAMINER

KRSEK STAPLES, J

ART UNIT PAPER NUMBER

4

1813
DATE MAILED:

11/23/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

for Species Election 0-14

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire one month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-848. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 8-22 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☒ Claims 1-7 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☐ Claims _____ are rejected.
5. ☐ Claims _____ are objected to.
6. ☒ Claims 9, 16 + 20 are subject to restriction or election requirement.
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-848).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1: Interleukin 2 (IL-2)

Species 2: lipid A

Species 3: phospholipase A2

Species 4: endotoxins

Species 5: Staphylococcal enterotoxin B

Species 6: Type I Interferon

Species 7: Type II Interferon

Species 8: Tumor Necrosis Factor

Species 9: IL-1

Species 10: IL-6

Species 11: IL-8

Species 12: IL-4

Species 13: Transforming Growth Factor- β

Species 14: Lymphotoxin

Species 15: IL-5

Species 16: Migration Inhibition Factor

Species 17: IL-3

Species 18: Granulocyte-Macrophage Colony-Stimulating Factor (CSF)

Species 19: Monocyte-Macrophage CSF

Species 20: Granulocyte CSF

Species 21: IL-7

Species 22: IL-10

Species 23: IL-11

Species 24: IL-12

Species 25: IL-13

Species 26: Vascular Epithelial Growth Factor (VEGF)

Species 27: Angiogenin

Species 28: Transforming Growth Factor (TGF α)

Species 29: Heat shock proteins

Species 30: Carbohydrate moieties of blood groups

Species 31: Rh factors

Species 32: Fibroblast Growth Factor

These species are listed in claims 9, 16, and 20. These species are distinct because the structural properties of these compounds are different and they also have different functional properties because they activate different biochemical pathways.

Applicant is required under 35 U.S.C. § 121 to elect a species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 8, 10-15, 17-19 and 21-22 are generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

A telephone call was made to Roxanne Edwards (P 38,767) on November 9, 1994 to request an oral election to the above election of species, but did not result in an election being made.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K. Staples whose telephone number is (703) 305-7556.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Group 180 by facsimile transmission via the PTO Fax Center, located in Crystal Mall 1. The Fax Center number is

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(703) 308-4227. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

JKS

Julie K. Staples, Ph.D.
November 18, 1994

CHRISTINE M. NUCKER
SUPERVISORY PATENT EXAMINER
GROUP 180


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